

REMARKS

At the outset, Applicant would like to thank the Examiner for her time, courtesy, and assistance during the recent telephonic interview. In accordance with the above-identified interview, Applicant has attempted to clarify the procedural history of the present application to place the same, as a whole, into *prima facie* condition for allowance at this time. Applicant submits that substantial care has been taken to avoid the introduction of any new subject matter into the application as a result of the foregoing amendments.

Applicant respectfully requests that the USPTO withdraw its Official Communication dated May 15, 2009, and either:

(1) Issue a Notice Of Allowance (PTOL-85) in accordance with the written agreement between the Examiner and Applicant, which was memorialized in writing per the Examiner Interview Summary Record dated December 22, 2003, or;

(2) Withdraw from the record the Amendment and Communication transmitted by Applicant on December 22, 2003, which was prepared and submitted to the USPTO in direct reliance upon the above-identified Examiner Interview Summary Record.

Notably, MPEP §706.04 states that full faith and credit should be given to the search and action of a previous Examiner unless there is a clear error in the previous action or knowledge of other prior art (emphasis added). The Examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something. Amgen, Inc. v. Hoechst Marion Roussel, Inc., 126 F. Supp. 2d 69, 139, 57 USPQ2d 1449, 1499-50 (D. Mass. 2001).

With regard to the present application, new prior art has not been established, and the record is completely void of any clear error on behalf of the previous Examiner. As such, in

acknowledgement of full faith and credit to the previous Examiner, as well as in the interest of compact prosecution, Applicant respectfully requests that the USPTO issue a Notice Of Allowance (PTOL-85) in accordance with the written agreement dated December 22, 2003. Alternatively, should the USPTO not issue a Notice of Allowance, then, at the very least, Applicant's Amendment and Communication dated December 22, 2003, should be expunged from the formal record so that Applicant is not adversely affected by any caselaw pertaining to amendment practice, include *Festo*.

Claims 3-69 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,679,283 (hereinafter the '283 patent) issued to Tonar, claims 3-53, 54-56, 58-59, 61-62, 64-65, and 67-69 have been rejected under 35 U.S.C. §102(b) as being anticipated by EP 612826 (hereinafter the '826 reference), and claims 54, 57, 60, 63, 66, and 69 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the '826 reference. For purposes of completeness, Applicant hereby incorporates by reference and restates its traversal of the above-identified rejections in its response dated June 19, 2008. However, inasmuch as Applicant has requested reconsideration in light of the procedural misfortune, Applicant respectfully submits that the above-identified rejections should be deemed improper and either: (1) A Notice Of Allowance (PTOL-85) be issued in accordance with the written agreement between the Examiner and Applicant, which was memorialized in writing per the Examiner Interview Summary Record dated December 22, 2003, or; (2) the Amendment and Communication transmitted by Applicant on December 22, 2003, which was prepared and submitted to the USPTO in direct reliance upon the above-identified Examiner Interview Summary Record be expunged from the file wrapper history of the present application. Favorable consideration is respectfully solicited.

In light of the foregoing, Applicant respectfully submits that the application is in *prima facie* condition for examination after the petitions office rendered its decision on the priority date.

If any other charges or fees must be paid or credited in connection with this communication, they may be paid out of our Deposit Account No. 50-2131.

Should anything further be required a telephone call to the undersigned is respectfully solicited.

Respectfully submitted,

KING & PARTNERS, PLC

Dated: 11.16.09

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